

1 Susan E. Coleman (SBN 171832)
E-mail: scoleman@bwsllaw.com
2 Carmen M. Aguado (SBN 291941)
E-mail: caguado@bwsllaw.com
3 BURKE, WILLIAMS & SORESENSEN, LLP
444 South Flower Street, Suite 2400
4 Los Angeles, CA 90071-2953
Tel: 213.236.0600 Fax: 213.236.2700

5 Attorneys for Defendants
6 THE GEO GROUP, INC., CITY OF ADELANTO,
CAMPOS, and DIAZ
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 OMAR ARNOLDO RIVERA
MARTINEZ; ISAAC ANTONIO
12 LOPEZ CASTILLO; JOSUE
VLADIMIR CORTEZ DIAZ; JOSUE
13 MATEO LEMUS CAMPOS;
MARVIN JOSUE GRANDE
14 RODRIGUEZ; ALEXANDER
ANTONIO BURGOS MEJIA; LUIS
15 PEÑA GARCIA; JULIO CESAR
BARAHONA CORNEJO, as
16 individuals,

17 Plaintiffs,

18 v.

19 THE GEO GROUP, Inc., a Florida
corporation; the CITY OF
20 ADELANTO, a municipal entity; GEO
LIEUTENANT DIAZ, sued in her
21 individual capacity; GEO
SERGEANT CAMPOS, sued in his
22 individual capacity; SARAH JONES,
sued in her individual capacity; THE
23 UNITED STATES OF AMERICA;
CORRECT CARE SOLUTIONS,
24 INC.; and DOES 1-10, individuals,

25 Defendants.
26
27
28

Case No. 5:18-cv-01125-SP

**DEFENDANTS' SUPPLEMENTAL
BRIEF IN SUPPORT OF ITS
MOTIONS FOR SUMMARY
JUDGMENT [DOC. # 108, 111]**

Magistrate
Judge:

Honorable Sheri Pym

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

The evidence and relevant legal authority confirm that GEO and its employees, Defendants Diaz and Campos, were performing the functions of a federal and not a state actor at the time of the incident. Thus, as demonstrated in the moving papers and reply briefs, pursuant to *Minneeci v. Pollard*, 565 U.S. 118 (2012), GEO, Diaz, and Campos cannot be liable under either Section 1983 (because they were not state actors at the time of the incident) or *Bivens* (because they are private entities) for any constitutional claims.¹

II. ARGUMENT.

At the hearing on Defendants' motions for summary judgment, Plaintiffs argued that GEO, Diaz, and Campos were performing the functions of the City at the time of the incident and, thus, they are subject to liability under Section 1983. To support their argument, Plaintiffs relied on unavailing evidence and arguments that were previously addressed in the moving papers, oppositions, and reply briefs: the agreement between GEO and the City, and the cases cited in their Oppositions.² They also, for the first time, argued that the following supported their argument: (1) the motion to dismiss that was filed by Defendant United States of America ("USA") (Doc. 52; *see also* Doc. 70 [Order] (analyzing Plaintiffs' Civil Code section 52.1 claim)); (2) a case that is currently before Judge Jesus G. Bernal, *Novoa v. GEO Group, Inc.*, which involves GEO and the same facility at issue here; and (3) a district court case from Rhode Island, *Lacedra v. Donald W. Wyatt Detention Facility*. However, Plaintiffs' arguments are *still* unavailing, and their new evidence and legal authority do not support their contention, as shown below.

¹ As stated at the hearing on Defendants' motions for summary judgment, Plaintiffs can nevertheless still pursue state law claims against GEO, Diaz, and Campos. Thus, summarily adjudicating Plaintiffs' section 1983 claims does not deprive Plaintiffs of a remedy for their alleged injuries.

² Defendants refer the Court to their reply papers, which demonstrate the cases cited by Plaintiffs in their oppositions do not support their argument. (Docs. 132, 133.)

1 **A. GEO, Diaz, And Campos Were Performing The Functions Of A**
 2 **Federal Actor At The Time Of The Incident.**

3 The relevant agreements that govern GEO's operations at the Facility, and
 4 the motion to dismiss that was filed by the USA, demonstrate that GEO, Diaz, and
 5 Campos are not state actors or subject to liability under Section 1983.

6 As detailed in the motion to dismiss filed by the USA, "Immigration and
 7 Customs Enforcement (ICE), Enforcement and Removal Operations ("ICE/ERO")
 8 at the [Facility] in Adelanto, California [] is responsible for managing the
 9 immigration cases of detained individuals." (Doc. 52 at 2:14-17.) "In addition,
 10 ICE/ERO has a secondary responsibility to observe, identify, and notify contractors
 11 and sub-contractors at [the Facility] of any perceived deficiencies in adherence to
 12 their responsibility under Performance-Based National Detention Standards³ 2011
 13 (PBNDS 2011 or PBNDS)." (*Id.* at 17-22.) The PBNDS/detention standards are
 14 consistent with federal legal and regulatory requirements and dictate the standards
 15 GEO is required to follow at the Facility with respect to Facility Security and
 16 Control, among other things. *See* <https://www.ice.gov/detention-standards/2011>;
 17 *see also* Doc. 108-5 [McCusker Decl.] at ¶ 6. Detainees at the Facility ***are under***
 18 ***the authority of ICE.*** (Doc. 52 at 2:23-26 (emphasis added).)

19 ICE acquires detention services through Intergovernmental Service
 20 Agreements (IGSAs).⁴ (Doc. 52 at 2:27-3:5.) Here, the Facility is operated under

21

 22 ³ As explained on ICE's official website, the Performance-Based National
 23 Detention Standards ("PBNDS") are standards that are maintained/revised by ICE
 24 which are implemented at detention facilities that house immigrant detainees. *See*
 25 Official Website of the Department of Homeland Security, 2011 Operations Manual
 26 ICE Performance-Based National Detention Standards *available at*
 27 <https://www.ice.gov/detention-standards/2011>; *see also* Fed. R. Evid. 201
 28 (demonstrating the Court can take judicial notice of facts that can be accurately and
 readily determined from sources whose accuracy cannot reasonably be questioned).
In other words, the conditions of the Facility fall under the jurisdiction of ICE as
they are governed by the PBNDS, and *not* Title 24 (the minimum standards for
 local detention facilities) or Title 15 (for state and local correctional facilities).

⁴ "ICE's unique IGSA authority is codified at 8 U.S.C. § 1103(a)(11)(A), which
 provides that ICE may enter into agreements with a state or subdivision thereof to

1 an IGSA between ICE and an independent contractor, the City. (*See* Doc. 52-1
 2 [Valdez Decl.] at ¶ 7, Ex. 1.) The IGSA’s purpose is for the City to provide,
 3 “detention and care of persons detained *under the authority of the Immigration*
 4 *and Nationality Act.*” (*See id.* at ¶ 7, Ex. 1, Article I.A (emphasis added).) The
 5 IGSA is a performance-based contract, which is a results-oriented method of
 6 contracting focused on outputs, quality, and outcomes. (*See id.* at ¶ 8.)
 7 Performance-based contracts do not designate how a contractor is to perform the
 8 work, but rather establish the expected outcomes and results. (*Id.*) It is then the
 9 responsibility of the contractor *as to how to meet the government's expectations.*
 10 (*Id.*) The City owns the Facility, and GEO entered into a service agreement with the
 11 City wherein GEO assumed and agreed without limitation to perform the City’s
 12 obligations and responsibilities as set forth in the IGSA – *i.e.*, the City’s
 13 responsibility to meet the federal government’s expectations that are detailed in the
 14 PBNDS. (*See id.* at ¶¶ 10, 12, 13, Exs. 1, Article II(D), 2, § 2.0.)

15 The evidence demonstrates that GEO, through its contract with the City, was
 16 performing the functions of a federal actor (DHS/ICE) at the Facility, a federal
 17 detention center under the jurisdiction of DHS/ICE, and its operations and
 18 management of the Facility fall under the federal standards promulgated by ICE. In
 19 other words, there is no evidence that this facility is operated as a State or City
 20 facility. Further, there are ICE employees at the Facility, to monitor that operations
 21 are conducted in compliance with federal regulations. (*See* Doc. 52.)

22 **B. *Novoa* Does Not Support Plaintiffs’ Contention.**

23 Plaintiffs’ reference to *Novoa v. GEO Group, Inc.*, a putative class action
 24 case against GEO that involves the wages for immigrant detainees at the Facility
 25 from 2012 to 2015, establishes that GEO, Diaz, and Campos can only be liable

26 procure, ‘necessary clothing, medical care, necessary guard hire, and the housing,
 27 care, and security of persons detained by [ICE] pursuant to Federal law’”
 28 (Doc. 52 at 3:6-9.) The motion to dismiss filed by the USA includes a copy of the
 IGSA and its appendix. (Doc. 52-2.)

1 under state law (e.g. state law tort claims). Specifically, *Novoa* does not involve a
 2 single Section 1983 claim as it relates to wage claims. *See Novoa v. GEO Group,*
 3 *Inc.*, EDCV172514JGBSHKX, 2018 WL 3343494 (C.D. Cal. June 21, 2018).
 4 Nevertheless, Judge Bernal analyzed whether the plaintiffs could bring state law
 5 claims and held, in pertinent part, that the Facility was federally run. *Id.* at 10.
 6 Judge Bernal then held that *Malesko* and *Minecci* govern the plaintiffs' claims.⁵ In
 7 other words, Judge Bernal applied the same analysis as Defendants herein and
 8 determined that *Malesko* and *Minecci* are controlling authority in analyzing claims
 9 against GEO brought by immigrant detainees at the Facility. Inherent in his
 10 determination is the conclusion that GEO and its employees are federal actors.

11 **C. Lacedra Similarly Does Not Support Plaintiffs' Argument.**

12 To support their argument, Plaintiffs cite *Lacedra v. Donald W. Wyatt*
 13 *Detention Facility*, 334 F. Supp. 2d 114 (D.R.I. 2004), a district court case from
 14 Rhode Island that is factually inapposite. *Lacedra* involved a plaintiff that was a US
 15 resident held at a facility operated by a private corporation pending his criminal
 16 trial. *Id.* at 120. The court followed "*Malesko* and conclude[ed] [the plaintiff was]
 17 unable to maintain a *Bivens* cause of action against the private, corporate
 18 [defendants]." *Id.* at 138. The court also held the plaintiff had a claim under Section
 19

20 ⁵ Judge Bernal provided the following detailed analysis: "[T]he Supreme Court has
 21 held that state law remedies are available to inmates in federal prisons run by
 22 private corporations. In [*Malesko*], the Supreme Court denied a prisoner's Eighth
 23 Amendment-based suit against a private corporation managing a federal prison. In
 24 doing so, the Supreme Court determined that a *Bivens* action was unnecessary given
 25 the prisoner's ability to bring state tort actions against the private defendants.
 26 [Citation omitted.] Later in [*Minecci*] the Supreme Court reiterated the alternate
 27 remedies available to prisoners in federally run facilities and privately run facilities,
 28 noting that ordinarily prisoners 'cannot bring state-law tort actions against
 employees of the Federal Government ... But prisoners ordinarily can bring state-
 law tort actions against employees of a private firm.' ... **Although [the plaintiff]
 does not seek to bring a constitutional claim against [the defendant], these
 cases stand for the proposition that persons confined in privately run federal
 facilities can bring causes of action under state law against the private entity.**
 Hence, ... the Court concludes causes of action under the CTVPA are available to
 federal immigration detainees in privately-run facilities." *See id.* at 10.

1 1983 because the private corporation acted under state law in performing traditional
 2 functions of a prison, given that the prison was under the jurisdiction of the state
 3 and the officials that “committed the alleged constitutional violations derived their
 4 authority over Plaintiff from state rather than federal law.” *Id.* at 140-141.

5 Here, the Facility is *not* a state run prison operating under the authority of
 6 state law, such as the GEO-operated Desert View MCCF that is located adjacent to
 7 the Adelanto ICE Processing Facility but houses state prisoners subject to CDCR
 8 authority instead of federal detainees subject to ICE authority. Thus, factually,
 9 *Lacedra* is inapposite. However, it is significant that in reaching the determination
 10 that Section 1983 was applicable to a privately run facility holding state prisoners,
 11 the *Lacedra* court analyzed where the defendant officials derived their authority. *Id.*
 12 at 140-141. Applying the same analysis here demonstrates GEO and its employees
 13 derive their authority at Adelanto from federal law. Consequently, Section 1983 is
 14 inapplicable as they are federal actors.⁶ Only state law remedies are available.

15 **IV. CONCLUSION.**

16 The evidence, legal authority, and Judge Bernal’s ruling in *Novoa*, all
 17 confirm that GEO, Campos, and Diaz were federal actors at the time of the incident
 18 and, as a result, Plaintiffs’ Section 1983 claims must be summarily adjudicated.

BURKE, WILLIAMS & SORENSEN, LLP

19 Dated: December 20, 2019

20 By: /s/ Susan E. Coleman

Susan E. Coleman
 21 Carmen M. Aguado

22 Attorneys for Defendants
 23 GEO, ADELANTO, CAMPOS, DIAZ

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 25 ⁶ *Bromfield v. McBurney*, C07-5226RBL-KLS, 2008 WL 2746289, at *1 (W.D.
 26 Wash. July 8, 2008), which declined to follow *Lacedra* for other reasons, held that
 27 GEO and its employees were federal actors when operating a federal immigration
 28 detention facility. *Id.* at *5 (“The undersigned, accordingly, must determine
 whether the actions of the GEO defendants can be viewed as those of federal
 officers, that is, as actions which are sufficiently attributable to federal actors [while
 at a federal immigration detention center]. The undersigned finds that they are.”)